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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 3rd April 2007

No.3041/1i/1446/90/L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 18th January, 2007 in I.D. Case No. 187/1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Badbag Weavers Coopeative Society Limited, Badbag, Punmag, Cuttack and its workman Shri Babaji Charan Das was reffered for adjudication is herby published as in the schedule below:—

### SCHEDULE

IN THE LABOUR COURT: BHUBANESWAR  
INDUSTRIAL DISPUTE CASE NO. 187 OF 1991

Dated The 18th January 2007

*Present:*

Shri S.K. Mohapatra, O.S.J.S.(Jr.Branch),  
Presideing Officer,  
Labour Court,  
Bhubaneswar.

*Between:*

The Management of Badbag Weavers .. First-Party—Management  
Coopeative Society Limited, Badbag,  
P.O.-Punnag, Dist-Cuttack.

*And*

Its Workman .. Second-Party—Workman  
Shri Babaji Charan Das

*Appearance:*

Shri J. Behera .. For First-Party—Management

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Shri B.C. Das .. Second-Party—Workman himself

## AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of Badbag Weavers Co-operative Society Limited and its workman Shri B.C. Das under Notification No. 8007/LE., dated the 18th July 1985 vide Memo.No. 12206(3)/LE., dated the 31st August 1991 for adjudication by this Court.

2. The terms of reference by the State Government is as follows:—

“Whether Shri Babaji Charan Das, Ex-Branch Manager, Bhubaneswar Branch of Badbag Weavers Co-operative Society was a workman as defined under the provisions of I.D. Act, 1947 ?

If, so, whether the action of the said employer in terminating his services with effect from 17th May 1989 is legal and/or justified ? If not, to what relief is he entitled ?”

3. Shorn of all unnecessary details, the case of the workman is as follows :—

The second-party workman(here-in-after referred to as the workman) was initially appointed as Clerk with effect from 20th November 1979 on daily wage basis at the rate of Rs. 5/- per day and accordingly he joined and worked under the first-party Management (herein-after referred to as the Management). Subsequently the services of the workman was terminated on 28th January 1980 but he was again appointed as temporary Clerk under the Management on 15th March 1980. In due course the workman joined as Branch Manager at Bhubaneswar Sale Depot under the Management on a monthly salary of Rs. 345/-. The workman took active part in Trade Union activities and lodged a complaint against the Management for implementing the provisions of the Minium Wages Act for all workers working under the Management. The Management persuaded the workman to withdraw the case, but on the refusal of the workman, the Management bore grude. The Management asked the workman to increase the sales of Bhubaneswar Sale Depot and asked him to supply clothes to some dealers with whom the workman had relationship of good faith. One 31st December 1988 one of the Directors of the Management verified the stocks of Bhubaneswar Sale Depot and found that there was shortage in the stocks which was un-accounted for. There after the workman was directed to handover the charge of all the records, stocks, furnitures etc. to one Bljay Kumar Das the new Branch Manager of Bhubaneswar Sale Depot. During handing-over of charge it was found that there was shortage of clothes the value of which was Rs. 19,473/-. The workman however, got back some clothes from the businessmen to whom such clothes had been given and returned clothes amounting to Rs. 11,264/- and also some more clothes amounting to Rs. 2,487.20. Such clothes were returned to the Management vide Bill No. 35, dated the 12th February 1989(Ext.12) and 43, 19th March 1989(Ext.13) and finally on 14th May 1989 the workman returned the rest of the clothes worth Rs. 5,722.25 to the President of the Management who refused to take charge of the said stock and filed a Dispute Case before the Assistant Director of Textiles who registered Dispute Case No. 1 of 1989-90. However, on the verbal instruction of the Assistant Director of Textiles, Cuttack the Secretary of the Management received the said stock of clothes amounting to Rs. 5,722.25 on 30th October 1989. The President of the Management put the workman under suspension with effect from 31st April 1989 and thereafter terminated his service with effect from 17th May 1989. After the

suspension of the workman from service there was no formal charge-sheet against the workman and there was no enquiry as per principles of natural justice and no opportunity was given to the workman to defend himself before termination of his service. The termination of service of the workman by the Management was arbitrary, illegal, unjustified and malafide amounting to unfair labour practice. On such averments, the workman has claimed for his reinstatement in service with all service benefits including full back wages.

4. The Management in its written statement has contended that the Management is a body corporate registered under Orissa Co-operative Societies Act and therefore, the reference by the State Government to the Labour Court is bad in law. Further contention of the Management is that the workman was posted at Bhubaneswar Sale Depot to work there as Branch Manager for the purpose of receiving the stocks from the Management for sales and for deposit of sale proceeds with the Management. On 31st December 1988 when Shri Padma Charan Das, Director verified the stock of Bhubaneswar Sale Depot he found shortage and therefore the workman was immediately asked to hand over charge to the new Branch Manager Shri Bijay Kumar Das on 5th January 1989. The new Branch Manager while taking over charge, found there was shortage to the extent of Rs. 19,473.80 which had not been accounted for in the concerned Books of Account and registers of Bhubaneswar Sale Depot. After several instruction and demands the workman could return clothes amounting to Rs. 13,751.50 only and there was still a balance of Rs. 5,722.25 for which the workman was served with a demand notice to return the misappropriated amount within specified time but on the failure of the workman to do so, the service of the workman was terminated with effect from 17th May 1989. It has been further contended that the second-party is not a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 and that the second-party was discharging duties which were purely managerial in nature and therefore, the provisions of the Industrial Disputes Act do not apply. It has been further contended by the Management that the workman had received all his legal dues when he approached the authorities under the payment of Wages Act. Since the workman is guilty of misappropriation of stocks, he is not worthy to the relief of reinstatement. On these averments, the Management has sought for dismissal of the present case.

5. On the aforesaid pleadings of the parties, the following issues were framed for consideration.

#### ISSUES

- (i) Whether the second-party is a workman as per I.D. Act, 1947 ?
- (ii) Has he any continuous service for a period of exceeding 240 days in a calendar year ?
- (iii) Is his termination of services with effect from 17th May 1989 amounts to retrenchment and whether the first -party followed the requirement of Section 25-F of I.D. Act ?
- (iv) To what relief ?

6. Before deciding the case, it is important to decide whether the second-party was a workman as defined under Section 2 (s) of the Industrial Disputes Act, 1947 (here in after referred to as the I.D. Act).

In the instant case the very pleadings of the Management is that the workman was posted at Bhubaneswar Sale Depot to work there as Branch Manager for the purpose of receiving the stocks from the Management and also he was responsible for the sales of such stocks and he was required to deposit the sale proceeds with the Management. Although the Management has contended that the second party was working as managerial capacity, there is nothing in the evidence of M.W.1 or in the pleadings of the Management or in the documents proved by the Management to show that the second party was exercising administrative control over any other staff or he was vested with any power to take independent decision. By merely using the term as Branch Manager one can not be said to be working in the managerial capacity. The workman in his pleading has clearly contended that he had been posted as Branch Manager with a Meagre salary of Rs. 345/- per month. Thus by no stretch of imagination it can be said that the second-party was working in managerial capacity. Rather in real term the second-party was a Salesman designated as Branch Manager and therefore, the second-party was definitely a workman within the meaning of Section 2(s) of the I.D. Act.

7. It is never disputed that the workman had worked for more than 240 days during the period of one year preceding the date of his termination from service with effect from 17th May 1989. Thereofre, the provision under Section 25-F of the I.D. Act apply. The provisions under Section 25-F of the I.D. Act lays down mandatory conditions which must precede to retrenchment of a workman from service. In the instant case, although the admitted fact is that on stock verification the Director of the Management found there was shortage of stock amounting to Rs. 19,473/- which was unaccounted for by the workman and therefore, the workman was placed under suspension, no formal charge was framed against the workman and there was no disciplinary proceeding against the workman. The workman had not been given one month's notice prior to his termination from service and the reasons for termination of his service was not noticed to him by way of framing of any formal charge. There is nothing in the evidence on record to show that the Management had followed the provisions under Section 25-F of the I.D. Act while terminating the service of the workman and therefore, it admits no doubt that the termination of the service of the workman by the Management was illegal. The contention of the Management that a reference under the provisions of the I.D. Act is not maintainable can not be sustained because the definition of the term 'industry' under Section 2(j) of the I.D. Act is very wide and includes Co-operative Societies where any systematic activity carried on by co-operation between an employer and the workman. Further more, there is nothing in the provisions of the Co-operative Societies Act to exclude the applicability of the I.D. Act to the workman working under the Co-operative Societies.

8. Now that it is held that the termination of the workman was illegal. It is to be considered as to what relief he is entitled to, it is an admitted fact that the stock of Rs. 19,473/- was found unaccounted for when the Director of the Management inspected the Branch where the workman was working as Branch Manager. Although the workman has contended that as per practice of the Society he had given those stock of clothes to different traders for sale as per the verbal

order of the Management, such contention can hardly be believed. The settled principle is that when ever any stock is sold or transferred, the same has to be accounted for in the Books of Accounts and such transaction can not take place on verbal orders or without entering such transaction in the concerned register. The mere fact that subsequently the workman managed to return clothes for the deficit amount on demand of the Management does not in any way help the workman who obviously was *prima facie* guilty of mis-appropriation and therefore, he deserved severe punishment by the Management. The only thing is that the Management did not follow the procedure laid down under Section 25-F of the I.D. Act and for that reason only and in the facts and circumstances of the case, it would meet the ends of justice if the workman is paid a sum of Rs. 25,000/- (Rupees Twenty-five Thousand) only in lieu of reinstatement in service. In the facts and circumstances of the case, the workman shall not be entitled to any back wages or any other benefits under the provisions of the I.D. Act.

The reference is thus answered accordingly.

Dictated and corrected by me.

S.K. Mohapatra,  
dt. 18-01-2007  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

S.K. Mohapatra,  
dt. 18-01-2007  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

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By order of the Governor

N.C. RAY

Under-Secretary to Government